

ORIGINAL

1 THOMAS E. FRANKOVICH (State Bar No. 074414)
 2 THOMAS E. FRANKOVICH,
 3 A Professional Law Corporation
 4 2806 Van Ness Avenue
 5 San Francisco, CA 94109
 6 Telephone: 415/674-8600
 7 Facsimile: 415/674-9900

5 Attorneys for Plaintiffs
 6 PATRICK CONNALLY
 7 and DISABILITY RIGHTS,
 8 ENFORCEMENT, EDUCATION,
 9 SERVICES: HELPING YOU
 10 HELP OTHERS

E-filing

FILED

JUN 12 2007

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

M6
ZD

BZ

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

11 PATRICK CONNALLY, an individual; and)
 12 DISABILITY RIGHTS, ENFORCEMENT,)
 13 EDUCATION, SERVICES:HELPING YOU)
 14 HELP OTHERS, a California public benefit)
 corporation,)

Plaintiffs,

v.
 16 BAYPORT MARINA PLAZA LLC, a)
 limited liability company,)

Defendant.

CASE NO. 07
Civil Rights

3032

**COMPLAINT FOR INJUNCTIVE RELIEF
AND DAMAGES:**

14 **1st CAUSE OF ACTION:** For Denial of Access
 15 by a Public Accommodation in Violation of the
 16 Americans with Disabilities Act of 1990 (42
 U.S.C. §12101, *et seq.*)

17 **2nd CAUSE OF ACTION:** For Denial of Full
 18 and Equal Access in Violation of California
 Civil Code §§54, 54.1 and 54.3

19 **3rd CAUSE OF ACTION:** For Denial of
 20 Accessible Sanitary Facilities in Violation of
 21 California Health & Safety Code §19955, *et seq.*

22 **4th CAUSE OF ACTION:** For Denial of
 23 Access to Full and Equal Accommodations,
 Advantages, Facilities, Privileges and/or
 Services in Violation of California Civil Code
 §51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

1 Plaintiffs PATRICK CONNALLY, an individual; and DISABILITY RIGHTS,
 2 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a California
 3 public benefit corporation (hereinafter sometimes referred to as "DREES"), complain of
 4 defendant BAYPORT MARINA PLAZA LLC and allege as follows:

5 **INTRODUCTION:**

6 1. This is a civil rights action for discrimination against persons with physical
 7 disabilities, of which class plaintiff PATRICK CONNALLY and the membership of DREES are
 8 members, for failure to remove architectural barriers structural in nature at defendants'
 9 BAYPORT MARINA PLAZA LLC, a place of public accommodation, thereby discriminatorily
 10 denying plaintiffs and the class of other similarly situated persons with physical disabilities
 11 access to, the full and equal enjoyment of, opportunity to participate in, and benefit from, the
 12 goods, facilities, services, and accommodations thereof. Plaintiffs seek injunctive relief and
 13 damages pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*;
 14 California Civil Code §§51, 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et*
 15 *seq.*

16 2. Plaintiff PATRICK CONNALLY is a person with physical disabilities who, on or
 17 about March 20, 2007, was an invitee, guest, patron, customer at defendants' BAYPORT
 18 MARINA PLAZA LLC , in the City of Redwood City, California. At said time and place,
 19 defendants failed to provide proper legal access to the Commercial Office Building, which is a
 20 "public accommodation" and/or a "public facility" including, but not limited to the signage,
 21 parking, path of travel men's and women's restroom. The denial of access was in violation of
 22 both federal and California legal requirements, and plaintiff PATRICK CONNALLY suffered
 23 violation of his civil rights to full and equal access, and was embarrassed and humiliated.

24 **JURISDICTION AND VENUE:**

25 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
 26 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
 27 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
 28 nucleus of operative facts and arising out of the same transactions, are also brought under parallel

1 California law, whose goals are closely tied with the ADA, including but not limited to violations
 2 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*
 3 *seq.*, including §19959; Title 24 California Building Standards Code.

4 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1331(b) and is
 5 founded on the facts that the real property which is the subject of this action is located at/near
 6 643 Bair Island Road, Suite 400, in the City of Redwood City, County of San Mateo, State of
 7 California, and that plaintiffs' causes of action arose in this county.

8 **PARTIES:**

9 5. Plaintiff PATRICK CONNALLY is a "physically handicapped person", a
 10 "physically disabled person", and a "person with physical disabilities" (hereinafter the terms
 11 "physically disabled", "physically handicapped" and "person with physical disabilities" are used
 12 interchangeably, as these words have similar or identical common usage and legal meaning, but
 13 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically
 14 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54, 54.1 and 55, and other
 15 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff
 16 PATRICK CONNALLY is a "person with physical disabilities", as defined by all applicable
 17 California and United States laws. Plaintiff has severe traumatic head injury, chronic arthritis in
 18 upper extremities and constant joint inflammation, pain and swelling. Plaintiff PATRICK
 19 CONNALLY requires the use of a wheelchair to travel about in public. Consequently, plaintiff
 20 PATRICK CONNALLY is a member of that portion of the public whose rights are protected by
 21 the provisions of Health & Safety Code §19955, *et seq.* (entitled "Access to Public
 22 Accommodations by Physically Handicapped Persons") and the protections of the Unruh Civil
 23 Rights Act, Civil Code §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the
 24 Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

25 6. Plaintiff DISABILITY RIGHTS, ENFORCEMENT, EDUCATION, SERVICES:
 26 HELPING YOU HELP OTHERS ("DREES") is a nonprofit (501(c)(3)) organization that works
 27 with persons with disabilities to empower them to be independent in American society. DREES
 28 accomplishes its goals and purposes through education on disability issues, enforcement of the

1 rights of persons with disabilities, and the provision of services to persons with disabilities, the
2 general public, public agencies and the private business sector. DREES brings this action on
3 behalf of its members, many of whom are persons with physical disabilities and whom have
4 standing in their right to bring this action.

5 7. That members of DREES, like plaintiff PATRICK CONNALLY, will or have
6 been guests and invitees at the subject BAYPORT MARINA PLAZA, and that the interests of
7 plaintiff DREES in removing architectural barriers at the subject Commercial Building advance
8 the purposes of DREES to assure that all public accommodations, including the subject
9 Commercial Building, are accessible to independent use by mobility-impaired persons. The
10 relief sought by plaintiff DREES as alleged herein is purely statutory in nature.

11 8. Defendant BAYPORT MARINA PLAZA LLC (hereinafter alternatively
12 collectively referred to as "defendant") is the owner and operator, lessor and/or lessees, or agent
13 of the owner, lessors and/or lessees, or agents of the owners, lessors and/or lessees, of the public
14 accommodation known as BAYPORT MARINA PLAZA, located at/near 643 Bair Island Road,
15 Suite 400, Redwood City, California, or of the building and/or buildings which constitute said
16 public accommodation.

17 9. At all times relevant to this complaint, defendant BAYPORT MARINA PLAZA
18 LLC, owns and operates in joint venture the subject BAYPORT MARINA PLAZA as a public
19 accommodation. This business is open to the general public and conducts business therein. The
20 business is a "public accommodation" or "public facility" subject to the requirements of
21 California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the
22 ADA, 42 U.S.C. §12101, *et seq.*

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 10. At all times relevant to this complaint, defendant BAYPORT MARINA PLAZA
2 LLC is jointly and severally responsible to identify and remove architectural barriers at the
3 subject pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in
4 pertinent part:

§ 36.201 General

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

PRELIMINARY FACTUAL ALLEGATIONS:

11. The BAYPORT MARINA PLAZA, is a commercial building, located at/near 643
Bair Island Road, Suite 400, Redwood City, California. The BAYPORT MARINA PLAZA, is
comprised of a series of Commercial suites whose tenants premises are public accommodations
including but not limited to: 1st Floor - Total Planning Concepts; State Farm; Private Office;
Gradient Systems; Castle Insurance Agency; Ledwith Houghton & Co.; Professional Home Care
Assoc., 2nd Floor - Consolidated Investments; AGISTIX ; RHINO Network Solutions; Edgewood
Center; Vitalog Inc., 3rd Floor - NTA America; Fowler Assoc.; Gibbons Syst; Quantile Design
Solutions; FUNAMBOL Inc.; Inspiration Med. and 4th Floor - Law Office of Bronson Brinkhop,
Griffth & Strong. BAYPORT MARINA PLAZA its signage, parking, path of travel, men's
restroom, women's restroom, and its other facilities are each a "place of public accommodation
or facility" subject to the barrier removal requirements of the Americans with Disabilities Act.
On information and belief, each such facility has, since July 1, 1970, undergone "alterations,
structural repairs and additions", each of which has subjected the BAYPORT MARINA PLAZA
and each of its facilities, its signage, parking, path of travel, men's and women's restroom to
disability access requirements per the Americans with Disabilities Act Accessibility Guidelines
(ADAAG), and Title 24 of the California Code of regulations (Title 24).

1 12. At all times stated herein, plaintiff PATRICK CONNALLY was a member of
2 DREES.

3 13. At all times referred to herein and continuing to the present time, defendant,
4 and each of them, advertised, publicized and held out, that all of the elements of and the premises
5 of the tenants who lease and/or rent from defendant BAYPORT MARINA PLAZA LLC what is
6 commonly referred to as the BAYPORT MARINA PLAZA as being handicapped accessible and
7 handicapped usable.

8 14. On or about March 20, 2007, plaintiff PATRICK CONNALLY was an invitee
9 and guest at the subject BAYPORT MARINA PLAZA, for purposes of conducting person
10 affairs.

11 15. On or about March 20, 2007, plaintiff PATRICK CONNALLY with his driver
12 Ben Kinney, pulled into the parking lot which serves all the tenants, their guests, invitees and the
13 general public who are there to conduct business.

14 16. At said time and place, plaintiff PATRICK CONNALLY discovered that there
15 was a lack of or inadequate parking signage, the number and type of disabled parking stalls and
16 proper path of travel.

17 17. At said time and place, plaintiff PATRICK CONNALLY entered suite 400 and
18 found that the lobby counter was too high.

19 18. At said time and place, plaintiff PATRICK CONNALLY, during the course of
20 the mediation, needed to use an accessible restroom. It did not matter if it was a men's or
21 women's restroom.

22 19. At said time and place, plaintiff PATRICK CONNALLY went to the men's
23 restroom which appeared to some, the whole floor and was unable to use the stall designated for
24 the disabled, because the stall was too short and plaintiff PATRICK CONNALLY was unable to
25 close the stall door behind him.

26 20. At said time and place, plaintiff PATRICK CONNALLY upon leaving, saw a
27 maintenance person and inquired if there were any handicap accessible restrooms. That person
28 was unaware of any.

1 21. Therefore, at said time and place, plaintiff PATRICK CONNALLY, a person
2 with a disability, encountered the following inaccessible elements of the subject BAYPORT
3 MARINA PLAZA which constituted architectural barriers and a denial of the proper and legally-
4 required access to a public accommodation to persons with physical disabilities including, but
5 not limited to:

- 6 a. lack of directional signage to show accessible routes of travel i.e.
7 entrances;
- 8 b. lack of the requisite number of regular disabled parking stall(s);
- 9 c. lack of disabled van accessible parking stall(s);
- 10 d. lack of (proper) disabled parking signage;
- 11 e. lack of a handicapped-accessible women's public restrooms;
- 12 f. lack of a handicapped-accessible men's public restrooms;
- 13 g. On personal knowledge, information and belief, other public facilities
14 and elements too numerous to list were improperly inaccessible for use
by persons with physical disabilities.

15 22. At all times stated herein, the existence of architectural barriers at defendants'
16 place of public accommodation evidenced "actual notice" of defendants' intent not to comply
17 with the Americans with Disabilities Act of 1990 either then, now or in the future.

18 23. At all times those parties/entities, that leased suite 400 knew or should have
19 known that their men's and women's restrooms were not accessible and should be brought into
20 compliance.

21 24. At all times stated herein, defendants, and each of them, were "negligent per
22 se" in not removing architectural barriers determined by the Department of Justice to be
23 considered a safety concern/safety hazard where it was readily achievable for said public
24 accommodation to remove barriers. The barriers and those requirements for barrier removal are
25 found in 28 CFR 36, and the building code to be followed is in appendix "A", referred to as
26 "ADAAG". Therefore as a legal result of defendants breach of duty to remove those barriers
27 encountered by plaintiff, plaintiff suffered bodily injury.

1 architectural barriers, policies, practices and procedures that denied access to plaintiffs and other
2 persons with disabilities, plaintiffs suffered the damages as alleged herein.

3 26. As a further legal result of the actions and failure to act of defendants, and as a
4 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
5 herein, plaintiffs were denied their civil rights to full and equal access to public facilities.
6 Plaintiff PATRICK CONNALLY suffered a loss of his civil rights and his rights as a person with
7 physical disabilities to full and equal access to public facilities, and further suffered bodily injury
8 (including, but not limited to, fatigue, stress, strain and pain in wheeling and attempting to and/or
9 transferring up, on, down, to, over, around and through architectural barriers. Specifically, as a
10 legal result of defendants negligence in the design, construction and maintenance of the existing
11 men's restroom stalls and failing to remove partitions and enlarge the stalls, plaintiff PATRICK
12 CONNALLY suffered continuous, repetitive and cumulative trauma to his extremities while
13 attempting to use the stall and toilet therein). Further, plaintiff PATRICK CONNALLY suffered
14 emotional distress, mental distress, mental suffering, mental anguish, which includes, but is not
15 limited to, shame, humiliation, embarrassment, anger, disappointment and worry, expectedly and
16 naturally associated with a person with physical disabilities being denied access, all to his
17 damages as prayed hereinafter in an amount within the jurisdiction of this court. No claim is
18 being made for mental and emotional distress over and above that usually associated with the
19 discrimination and physical injuries claimed, and no expert testimony regarding this usual mental
20 and emotional distress will be presented at trial in support of the claim for damages.

21 27. Defendants', and each of their, failure to remove the architectural barriers
22 complained of herein created, at the time of plaintiff PATRICK CONNALLY's first visit to said
23 public accommodation, and continues to create continuous and repeated exposure to substantially
24 the same general harmful conditions which caused plaintiff PATRICK CONNALLY harm as
25 stated herein.

26 28. Plaintiff PATRICK CONNALLY and the membership of DREES were denied
27 their rights to equal access to a public facility by defendant BAYPORT MARINA PLAZA LLC,
28 because defendant BAYPORT MARINA PLAZA LLC maintained an entire office building

1 without access for persons with physical disabilities to its facilities, including but not limited to
2 signage, parking, path of travel, men's restrooms, women's restrooms, and other public areas as
3 stated herein, and continue to the date of filing this complaint to deny equal access to plaintiffs
4 and other persons with physical disabilities in these and other ways.

5 29. On information and belief, construction alterations carried out by defendants
6 have also triggered access requirements under both California law and the Americans with
7 Disabilities Act of 1990.

8 30. Plaintiffs, as described hereinbelow, seek injunctive relief to require the to be
9 made accessible to meet the requirements of both California law and the Americans with
10 Disabilities Act of 1990, whichever is more restrictive, so long as defendant operates the
11 BAYPORT MARINA PLAZA as a public facility. Plaintiffs seek damages for violation of their
12 civil rights on March 20, 2007 and they seek statutory damages of not less than \$4,000, pursuant
13 to Civil Code §52(a) or alternatively \$1000 pursuant to Civil Code §54.3, for each day after his
14 visit that plaintiff PATRICK CONNALLY was deterred from returning to the BAYPORT
15 MARINA PLAZA because of his knowledge and belief that the premises was and remains
16 inaccessible to persons with disabilities.

17 31. On information and belief, defendants have been negligent in their affirmative
18 duty to identify the architectural barriers complained of herein and negligent in the removal of
19 some or all of said barriers.

20 32. Because of defendants' violations, plaintiffs and other persons with physical
21 disabilities are unable to use public facilities such as those owned and operated by defendants on
22 a "full and equal" basis unless such facility is in compliance with the provisions of the
23 Americans with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et*
24 *seq.* and other accessibility law as plead herein. Plaintiffs seek an order from this court
25 compelling defendant to make the BAYPORT MARINA PLAZA accessible to persons with
26 disabilities.

27 33. On information and belief, defendants have intentionally undertaken to modify
28 and alter existing building(s), and have failed to make them comply with accessibility

1 requirements under the requirements of ADAAG and Title 24. The acts and omission of
2 defendants, and each of them, in failing to provide the required accessible public facilities at
3 the time of plaintiff's visit and injuries, indicate actual and implied malice toward plaintiffs, and
4 despicable conduct carried out by defendants, and each of them, with a willful and conscious
5 disregard for the rights and safety of plaintiffs and other similarly situated persons, and justify a
6 trembling of damages as provided by Civil Code §§52(a) and 54.3, in order to make a more
7 profound example of defendants, and each of them, to other operators of other Commercial
8 Buildings and other public facilities, and to punish defendants and to carry out the purposes of
9 the Civil Code §§ 51, 51.5 and 54.

10 34. Plaintiffs are informed and believe and therefore allege that defendant
11 BAYPORT MARINA PLAZA LLC, and each of them, caused the subject building(s) which
12 constitute the BAYPORT MARINA PLAZA to be constructed, altered and maintained in such a
13 manner that persons with physical disabilities were denied full and equal access to, within and
14 throughout said building(s) of the BAYPORT MARINA PLAZA and were denied full and equal
15 use of said public facilities. Furthermore, on information and belief, defendants have continued
16 to maintain and operate said BAYPORT MARINA PLAZA and/or its building(s) in such
17 conditions up to the present time, despite actual and constructive notice to such defendants that
18 the configuration of the BAYPORT MARINA PLAZA and/or its building(s) is in violation of the
19 civil rights of persons with physical disabilities, such as plaintiff PATRICK CONNALLY, the
20 membership of plaintiff DREES and the disability community which DREES serves. Such
21 construction, modification, ownership, operation, maintenance and practices of such public
22 facilities are in violation of Civil Code §§51, 51.5 and 54, Health and Safety Code §19955, and
23 the ADA, 42 U.S.C. §12101, *et seq.*

24 35. On personal knowledge, information and belief, the basis of defendants' actual
25 and constructive notice that the physical configuration of the facilities including, but not limited
26 to, architectural barriers constituting the BAYPORT MARINA PLAZA and/or building(s) was
27 in violation of the civil rights of persons with physical disabilities, such as plaintiffs, includes,
28 but is not limited to, communications with invitees and guests, the tenants of BAYPORT

1 MARINA PLAZA itself, owners of other Commercial Buildings and businesses, notices they
2 obtained from governmental agencies upon modification, improvement, or substantial repair of
3 the subject premises and other properties owned by these defendants, newspaper articles and
4 trade publications regarding the Americans with Disabilities Act of 1990 and other access laws,
5 public service announcements by former U.S. Attorney General Janet Reno between 1993 and
6 2000, and other similar information. Defendants' failure, under state and federal law, to make
7 the BAYPORT MARINA PLAZA accessible is further evidence of defendants' conscious
8 disregard for the rights of plaintiff and other similarly situated persons with disabilities. Despite
9 being informed of such effect on plaintiff and other persons with physical disabilities due to the
10 lack of accessible facilities, defendants, and each of them, knowingly and willfully refused to
11 take any steps to rectify the situation and to provide full and equal access for plaintiffs and other
12 persons with physical disabilities to the Commercial Building. Said defendants, and each of
13 them, have continued such practices, in conscious disregard for the rights of plaintiffs and other
14 persons with physical disabilities, up to the date of filing of this complaint, and continuing
15 thereon. Defendant had further actual knowledge of the architectural barriers referred to herein
16 by virtue of the demand letter addressed to the defendant and served concurrently with the
17 summons and complaint. Said conduct, with knowledge of the effect it was and is having on
18 plaintiffs and other persons with physical disabilities, constitutes despicable conduct in conscious
19 disregard of the rights and safety of plaintiffs and of other similarly situated persons, justifying
20 the imposition of treble damages per Civil Code §§52 and 54.3.

21 36. Plaintiff PATRICK CONNALLY and plaintiff DREES, on behalf of its
22 membership and the disability community which it serves, consisting of persons with
23 disabilities, would, could and will return to the subject public accommodation when it is made
24 accessible to persons with disabilities.

25 ///

26 ///

27 ///

28 ///

1 I. **FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC
2 ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH
3 DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

4 (On behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS
5 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
6 California public benefit corporation and Against Defendant BAYPORT MARINA
7 PLAZA LLC, a limited liability company, inclusive)
8 (42 U.S.C. §12101, *et seq.*)

9 37. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
10 the allegations contained in paragraphs 1 through 36 of this complaint.

11 38. Pursuant to law, in 1990, the United States Congress made findings per
12 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed to
13 more fully protect:

14 some 43 million Americans with one or more physical or mental
15 disabilities; [that] historically society has tended to isolate and
16 segregate individuals with disabilities; [that] such forms of
17 discrimination against individuals with disabilities continue to be a
18 serious and pervasive social problem; [that] the nation's proper goals
19 regarding individuals with disabilities are to assure equality of
20 opportunity, full participation, independent living and economic self-
21 sufficiency for such individuals; [and that] the continuing existence
22 of unfair and unnecessary discrimination and prejudice denies people
23 with disabilities the opportunity to compete on an equal basis and to
24 pursue those opportunities for which our free society is justifiably
25 famous.

26 39. Congress stated as its purpose in passing the Americans with Disabilities Act of
27 1990 (42 U.S.C. §12102):

28 It is the purpose of this act (1) to provide a clear and comprehensive
29 national mandate for the elimination of discrimination against
30 individuals with disabilities; (2) to provide clear, strong, consistent,
31 enforceable standards addressing discrimination against individuals
32 with disabilities; (3) to ensure that the Federal government plays a
33 central role in enforcing the standards established in this act on behalf
34 of individuals with disabilities; and (4) to invoke the sweep of
35 Congressional authority, including the power to enforce the 14th
36 Amendment and to regulate commerce, in order to address the major
37 areas of discrimination faced day to day by people with disabilities.

38 40. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
39 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
40 Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
41 accommodations identified for purposes of this title was:

(7) PUBLIC ACCOMMODATION - The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce -

• • •

(E) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;

(F) a laundromat, dry-cleaner, bank, barber shop, beauty parlor, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital or other service establishment;

42 U.S.C. §12181(7)(E)(F)

41. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation".

42. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
42 U.S.C. §12182(b)(2)(a) are:

(I) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods

1 services, facilities, privileges, advantages or accommodations available
 2 through alternative methods if such methods are readily achievable.

3 The acts of defendant set forth herein were a violation of plaintiffs' rights under the ADA, Public
 4 Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective
 5 January 31, 1993, the standards of the ADA were also incorporated into California Civil Code
 6 §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

7 43. The removal of the barriers complained of by plaintiffs as hereinabove alleged
 8 was at all times after January 26, 1992 "readily achievable" as to the subject building(s) of
 9 BAYPORT MARINA PLAZA pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information
 10 and belief, if the removal of all the barriers complained of herein together was not "readily
 11 achievable," the removal of each individual barrier complained of herein was "readily
 12 achievable." On information and belief, defendants' failure to remove said barriers was likewise
 13 due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C.
 14 §12182 (b)(2)(A)(i)and (ii).

15 44. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily
 16 accomplishable and able to be carried out without much difficulty or expense." The statute
 17 defines relative "expense" in part in relation to the total financial resources of the entities
 18 involved. Plaintiffs allege that properly repairing, modifying, or altering each of the items that
 19 plaintiffs complain of herein were and are "readily achievable" by the defendant under the
 20 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was
 21 not "readily achievable" for defendant to remove each of such barriers, defendant has failed to
 22 make the required services available through alternative methods which were readily achievable.

23 45. On information and belief, construction work on, and modifications of, the
 24 subject building(s) of BAYPORT MARINA PLAZA occurred after the compliance date for the
 25 Americans with Disabilities Act, January 26, 1992, independently triggering access requirements
 26 under Title III of the ADA.

27 46. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
 28 *seq.*, plaintiffs are entitled to the remedies and procedures set forth in §204(a) of the Civil Rights

1 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiffs are being subjected to discrimination on the
 2 basis of disability in violation of this title or have reasonable grounds for believing that plaintiffs
 3 are about to be subjected to discrimination in violation of §302. Plaintiffs are deterred from
 4 returning to or making use of the public facilities complained of herein so long as the premises
 5 and defendants' policies bar full and equal use by persons with physical disabilities.

6 47. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person
 7 with a disability to engage in a futile gesture if such person has actual notice that a person or
 8 organization covered by this title does not intend to comply with its provisions". Pursuant to this
 9 section, plaintiff PATRICK CONNALLY has not returned to defendants' premises since on or
 10 about March 20, 2007, but on information and belief, alleges that defendant has continued to
 11 violate the law and deny the rights of plaintiffs and of other persons with physical disabilities to
 12 access this public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of
 13 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
 14 facilities readily accessible to and usable by individuals with disabilities to the extent required by
 15 this title".

16 48. Plaintiffs seek relief pursuant to remedies set forth in §204(a) of the Civil
 17 Rights Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to
 18 implement the Americans with Disabilities Act of 1990, including but not limited to an order
 19 granting injunctive relief and attorneys' fees. Plaintiffs will seek attorneys' fees conditioned
 20 upon being deemed to be the prevailing party.

21 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

22 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS
 23 IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET
 24 SEQ.**

25 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS,
 26 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
 27 California public benefit corporation, and Against Defendant BAYPORT MARINA
 28 PLAZA LLC, a limited liability company, inclusive)
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

29 49. Plaintiffs replead and incorporate by reference as if fully set forth again herein,
 30 the allegations contained in paragraphs 1 through 48 of this complaint.

1 50. At all times relevant to this action, California Civil Code §54 has provided that
 2 persons with physical disabilities are not to be discriminated against because of physical
 3 handicap or disability. This section provides that:

4 (a) Individuals with disabilities . . . have the same rights as the
 5 general public to full and free use of the streets, highways, sidewalks,
 6 walkways, public buildings, medical facilities, including hospitals, clinics,
 7 and physicians' offices, and other public places.

8 51. California Civil Code §54.1 provides that persons with disabilities shall not be
 9 denied full and equal access to places of public accommodation or facilities:

10 (a)(1) Individuals with disabilities shall be entitled to full and
 11 equal access, as other members of the general public, to
 12 accommodations, advantages, facilities, medical facilities, including
 13 hospitals, clinics, and physicians' offices, and privileges of all
 14 common carriers, airplanes, motor vehicles, railroad trains,
 15 motorbuses, streetcars, boats, or any other public conveyances or
 16 modes of transportation (whether private, public, franchised, licensed,
 17 contracted, or otherwise provided), telephone facilities, adoption
 18 agencies, private schools, hotels, lodging places, places of public
 19 accommodation, amusement or resort, and other places to which the
 20 general public is invited, subject only to the conditions and
 21 limitations established by law, or state or federal regulation, and
 22 applicable alike to all persons.

23 Civil Code §54.1(a)(1)

24 52. California Civil Code §54.1 further provides that a violation of the Americans
 25 with Disabilities Act of 1990 constitutes a violation of section 54.1:

26 (d) A violation of the right of an individual under the
 27 Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes
 28 a violation of this section, and nothing in this section shall be construed to limit
 the access of any person in violation of that act.

29 Civil Code §54.1(d)

30 53. Plaintiff PATRICK CONNALLY and the membership of plaintiff DREES are
 31 persons within the meaning of Civil Code §54.1 whose rights have been infringed upon and
 32 violated by the defendants, and each of them, as prescribed by §§54 and 54.1. Each specific
 33 architectural barrier which defendants knowingly and willfully fail and refuse to remove
 34 constitutes a separate act in violation of §§54 and 54.1. Plaintiffs have been and continue to be
 35 denied full and equal access to defendants' BAYPORT MARINA PLAZA. As a legal result,
 36 plaintiffs are entitled to seek damages pursuant to California Civil Code §54.3(a) for each day on

1 which they visited or have been deterred from visiting the BAYPORT MARINA PLAZA
2 because of their knowledge and belief that the Commercial Building is inaccessible to persons
3 with disabilities. California Civil Code §54.3(a) provides:

4 Any person or persons, firm or corporation, who denies or interferes
5 with admittance to or enjoyment of the public facilities as specified in
6 Sections 54 and 54.1 or otherwise interferes with the rights of an
7 individual with a disability under Sections 54, 54.1 and 54.2 is liable
8 for each offense for the actual damages and any amount as may be
9 determined by a jury, or the court sitting without a jury, up to a
maximum of three times the amount of actual damages but in no case
less than . . . one thousand dollars (\$1,000) and . . . attorney's fees as
may be determined by the court in addition thereto, suffered by any
person denied any of the rights provided in Sections 54, 54.1 and
54.2.

10 Civil Code §54.3(a)

11 54. On or about March 20, 2007, plaintiff PATRICK CONNALLY suffered
12 violations of §§54 and 54.1 of the Civil Code in that plaintiff PATRICK CONNALLY was
13 denied access to the signage, parking, path of travel, men's restrooms, women's restrooms and
14 other public facilities as stated herein at the BAYPORT MARINA PLAZA and on the basis that
15 plaintiff PATRICK CONNALLY was a person with physical disabilities.

16 55. As a result of the denial of equal access to defendants' facilities due to the acts
17 and omissions of defendant, and each of them, in owning, operating and maintaining these
18 subject public facilities, plaintiffs suffered violations of plaintiffs' civil rights, including but not
19 limited to rights under §§54, 54.1 and 54.3, Civil Code, and plaintiff PATRICK CONNALLY
20 suffered physical discomfort, bodily injury (including, but not limited to, fatigue, stress, strain
21 and pain in wheeling and attempting to and/or transferring up, on, down, to, over, around and
22 through architectural barriers. Specifically, as a legal result of defendant negligence in the
23 design, construction and maintenance of the existing stall of the subject men's restroom, plaintiff
24 PATRICK CONNALLY suffered continuous, repetitive and cumulative trauma to his extremities
25 while attempting to utilize said stall). Further, plaintiff PATRICK CONNALLY suffered
26 emotional distress, mental distress, mental suffering, mental anguish, which includes shame,
27 humiliation, embarrassment, frustration, anger, disappointment and worry, all of which are
28 expectedly and naturally associated with a denial of access to a person with physical disabilities,

1 all to plaintiff's damages as hereinafter stated. Defendants' actions and omissions to act
2 constituted discrimination against plaintiff on the sole basis that plaintiffs are persons or an entity
3 that represents persons with physical disabilities and unable, because of the architectural barriers
4 created and maintained by the defendants in violation of the subject laws, to use the public
5 facilities hereinabove described on a full and equal basis as other persons.

6 56. Plaintiffs have been damaged by defendants', and each of their, wrongful
7 conduct and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 and 55 for
8 violation of plaintiffs' rights as persons or an entity that represents persons with physical
9 disabilities on or about March 20, 2007, and on a continuing basis since then, including statutory
10 damages, a trebling of all of actual damages, general and special damages available pursuant to
11 §54.3 of the Civil Code according to proof.

12 57. As a result of defendants', and each of their, acts and omissions in this regard,
13 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
14 plaintiffs' rights and enforce the provisions of the law protecting access for persons with physical
15 disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to
16 the provisions of §54.3 and §55 of the Civil Code, plaintiffs therefore will seek recovery in this
17 lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing party.
18 Additionally, plaintiffs' lawsuit is intended not only to obtain compensation for damages to
19 plaintiffs, but also to compel the defendant to make their facilities accessible to all members of
20 the public with disabilities, justifying public interest attorneys' fees, if deemed the prevailing
21 party, pursuant to the provisions of §1021.5 of the Code of Civil Procedure.

22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

2 **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY
3 FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, ET.
4 SEQ.**

5 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS,
6 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
7 California public benefit corporation and Against Defendant BAYPORT MARINA
8 PLAZA LLC, a limited liability company, inclusive)
9 (Health & Safety Code §19955, *et seq.*)

10 58. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
11 the allegations contained in paragraphs 1 through 57 of this complaint.

12 59. Health & Safety Code §19955 provides in pertinent part:

13 The purpose of this part is to insure that public accommodations or
14 facilities constructed in this state with private funds adhere to the
15 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5
16 of Title 1 of the Government Code. For the purposes of this part
17 “public accommodation or facilities” means a building, structure,
18 facility, complex, or improved area which is used by the general
19 public and shall include auditoriums, hospitals, theaters, restaurants,
20 hotels, motels, stadiums, and convention centers. When sanitary
21 facilities are made available for the public, clients or employees in
22 such accommodations or facilities, they shall be made available for
23 the handicapped.

24 60. Health & Safety Code §19956, which appears in the same chapter as §19955,
25 provides in pertinent part, “accommodations constructed in this state shall conform to the
26 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government
27 Code” Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all
28 public accommodations constructed or altered after that date. On information and belief,
portions of the BAYPORT MARINA PLAZA and/or of the building(s) were constructed and/or
altered after July 1, 1970, and substantial portions of the Commercial Building and/or the
building(s) had alterations, structural repairs, and/or additions made to such public
accommodations after July 1, 1970, thereby requiring said Commercial Building and/or building
to be subject to the requirements of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon
such alteration, structural repairs or additions per Health & Safety Code §19959.

61. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the
State Architect promulgated regulations for the enforcement of these provisions. Effective July

1 1, 1982, Title 24 of the California Building Standards Code adopted the California State
2 Architect's Regulations and these regulations must be complied with as to any alterations and/or
3 modifications of the BAYPORT MARINA PLAZA and/or the building(s) occurring after that
4 date. Construction changes occurring prior to this date but after July 1, 1970 triggered access
5 requirements pursuant to the "ASA" requirements, the American Standards Association
6 Specifications, A117.1-1961. On information and belief, at the time of the construction and
7 modification of said building, all buildings and facilities covered were required to conform to
8 each of the standards and specifications described in the American Standards Association
9 Specifications and/or those contained in Title 24 of the California Building Standards Code.

10 62. Commercial Buildings such as the BAYPORT MARINA PLAZA are "public
11 accommodations or facilities" within the meaning of Health & Safety Code §19955, *et seq.*

12 63. As a result of the actions and failure to act of defendants, and as a result of the
13 failure to provide proper and legally handicapped-accessible public facilities, plaintiffs were
14 denied plaintiffs' rights to full and equal access to public facilities and suffered a loss of
15 plaintiffs' civil rights and plaintiffs' rights as persons with physical disabilities to full and equal
16 access to public facilities.

17 64. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard,
18 plaintiffs have been required to incur legal expenses and hire attorneys in order to enforce
19 plaintiffs' civil rights and enforce provisions of the law protecting access for the persons with
20 physical disabilities and prohibiting discrimination against the persons with physical disabilities,
21 and to take such action both in plaintiffs' own interests and in order to enforce an important right
22 affecting the public interest. Plaintiffs, therefore, seek in this lawsuit the recovery of all
23 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
24 §1021.5. Plaintiffs additionally seek attorneys' fees pursuant to Health & Safety Code §19953
25 and Civil Code §§54.3 and 55 and/or in the alternative, plaintiffs will seek attorneys' fees, costs
26 and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-
27 3(a)). Plaintiffs will seek attorneys' fees conditioned upon being deemed to be the prevailing
28 party.

1 65. Plaintiffs seek injunctive relief for an order compelling defendants, and each of
 2 them, to make the subject place of public accommodation readily accessible to and usable by
 3 persons with disabilities.

4 Wherefore, plaintiffs pray for damages and relief as hereinafter stated.

5 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**
 6 **EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES**
 7 **AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET**
SEO. (THE UNRUH CIVIL RIGHTS ACT)

8 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS,
 9 ENFORCEMENT, EDUCATION, SERVICES: HELPING YOU HELP OTHERS, a
 California public benefit corporation, and Against Defendant BAYPORT MARINA
 PLAZA LLC, a limited liability company, inclusive)
 (Civil Code §51, 51.5)

10 66. Plaintiffs replead and incorporate by reference, as if fully set forth again herein,
 11 the allegations contained in paragraphs 1 through 65 of this complaint.

12 67. Defendants' actions and omissions and failure to act as a reasonable and
 13 prudent public accommodation in identifying, removing and/or creating architectural barriers,
 14 policies, practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act.

15 The Unruh Act provides:

16 This section shall be known, and may be cited, as the Unruh Civil
 17 Rights Act.

18 All persons within the jurisdiction of this state are free and equal, and
 19 no matter what their sex, race, color, religion, ancestry, national origin, or
 20 **disability** are entitled to the full and equal accommodations, advantages,
 facilities, privileges, or services in all business establishments of every kind
 whatsoever.

21 This section shall not be construed to confer any right or privilege on
 22 a person that is conditioned or limited by law or that is applicable alike to
 persons of every sex, color, race, religion, ancestry, national origin, or
disability.

23 Nothing in this section shall be construed to require any construction,
 24 alteration, repair, structural or otherwise, or modification of any sort
 25 whatsoever, beyond that construction, alteration, repair, or modification that
 26 is otherwise required by other provisions of law, to any new or existing
 establishment, facility, building, improvement, or any other structure . . . nor
 27 shall anything in this section be construed to augment, restrict, or alter in any
 way the authority of the State Architect to require construction, alteration,
 repair, or modifications that the State Architect otherwise possesses pursuant
 to other . . . laws.

1 A violation of the right of any individual under the Americans with
 2 Disabilities Act of 1990 (Public Law 101-336) shall also constitute a
 violation of this section.

3 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
 4 “intent” of the defendant in not complying with barrier removal is not an issue. Hence, the
 5 failure on the parts of defendant, as reasonable and prudent public accommodations, in acting or
 6 failing to act to identify and remove barriers can be construed as a “negligent per se” act of
 7 defendants, and each of them.

8 68. The acts and omissions of defendant stated herein are discriminatory in nature
 9 and in violation of Civil Code §51.5:

10 No business establishment of any kind whatsoever shall discriminate
 11 against, boycott or blacklist, refuse to buy from, sell to, or trade with any
 12 person in this state because of the race, creed, religion, color, national origin,
 sex, or **disability** of the person or of the person’s partners, members,
 stockholders, directors, officers, managers, superintendents, agents,
 employees, business associates, suppliers, or customers.

14 As used in this section, “person” includes any person, firm
 association, organization, partnership, business trust, corporation, limited
 15 liability company, or company.

16 Nothing in this section shall be construed to require any construction,
 alteration, repair, structural or otherwise, or modification of any sort
 17 whatsoever, beyond that construction, alteration, repair or modification that
 is otherwise required by other provisions of law, to any new or existing
 18 establishment, facility, building, improvement, or any other structure . . . nor
 shall anything in this section be construed to augment, restrict or alter in any
 19 way the authority of the State Architect to require construction, alteration,
 repair, or modifications that the State Architect otherwise possesses pursuant
 20 to other laws.

21 69. Defendants’ acts and omissions as specified have denied to plaintiffs full and
 22 equal accommodations, advantages, facilities, privileges and services in a business establishment,
 23 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil
 24 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, “A
 25 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public
 26 Law 101-336) shall also constitute a violation of this section”. Plaintiffs accordingly incorporate
 27 the entirety of their above cause of action for violation of the Americans with Disabilities Act at
 28 §37, *et seq.*, as if replied herein.

1 70. As a legal result of the violation of plaintiff PATRICK CONNALLY's civil
 2 rights as hereinabove described, plaintiff PATRICK CONNALLY has suffered general damages,
 3 bodily injury (including, but not limited to, fatigue, stress, strain and pain in wheeling and
 4 attempting to and/or transferring up, on, down, to, over, around and through architectural
 5 barriers. Specifically, as a legal result of defendants negligence in the design, construction and
 6 maintenance of the existing men's stall in failing to remove one partition and enlarge the stall
 7 itself, plaintiff PATRICK CONNALLY suffered continuous, repetitive and cumulative trauma to
 8 his extremities while attempting to use the water closet and close the door). Further, plaintiff
 9 PATRICK CONNALLY suffered emotional distress (all to plaintiff's damage according to proof,
 10 and incurred reasonable attorneys' fees and costs). Plaintiffs PATRICK CONNALLY and
 11 DREES are entitled to the rights and remedies of §52(a) of the Civil Code, including trebling of
 12 actual damages (defined by §52(h) of the Civil Code to mean "special and general damages"), as
 13 well as to reasonable attorneys' fees and costs, as is allowed by statute, according to proof if
 14 deemed to be the prevailing party.

15 **PRAYER:**

16 Plaintiffs pray that this court award damages and provide relief as follows:

17 I. **PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT OF 1990 (42 U.S.C. §12101, et seq.)
 18 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS
 19 ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a
 20 California public benefit corporation, and Against Defendant BAYPORT MARINA
 21 PLAZA LLC, a limited liability company, inclusive)
 (42 U.S.C. §12101, et seq.)

22 1. For injunctive relief, compelling defendant BAYPORT MARINA PLAZA
 23 LLC, inclusive, to make the BAYPORT MARINA PLAZA, located at 643 Bair Island Road,
 24 Suite 400, Redwood City, California, readily accessible to and usable by individuals with
 25 disabilities, per 42 U.S.C §12181, et seq., and to make reasonable modifications in policies,
 26 practice, eligibility criteria and procedures so as to afford full access to the goods, services,
 27 facilities, privileges, advantages and accommodations being offered.

28

1 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiffs are deemed
 2 the prevailing party; and

3 3. For such other and further relief as the court may deem proper.

4 **II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1
AND 54.3, ET SEQ.

5 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS
 6 ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a
 7 California public benefit corporation, and Against Defendant BAYPORT MARINA
 8 PLAZA LLC, a limited liability company, inclusive)
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

9 1. For injunctive relief, compelling defendant BAYPORT MARINA PLAZA
 10 LLC, inclusive, to make the BAYPORT MARINA PLAZA, located at 643 Bair Island Road,
 11 Suite 400, Redwood City, California, readily accessible to and usable by individuals with
 12 disabilities, per state law.

13 2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and
 14 for each occasion on which plaintiffs were deterred from returning to the subject public
 15 accommodation.

16 3. Attorneys' fees pursuant to Civil Code §54.3 and §55 and Code of Civil
 17 Procedure §1021.5, if plaintiffs are deemed the prevailing party;

18 4. Treble damages pursuant to Civil Code §54.3;

19 5. For all costs of suit;

20 6. Prejudgment interest pursuant to Civil Code §3291;

21 7. Such other and further relief as the court may deem just and proper.

22 **III. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND**
EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1
AND 54.3, ET SEQ.

23 (On Behalf of Plaintiff PATRICK CONNALLY, and Against Defendant BAYPORT
 24 MARINA PLAZA LLC, a limited liability company, inclusive),
 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

25 1. General and compensatory damages according to proof.

26 ///

27 ///

1 **IV. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
2 SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
3 §19955, ET. SEQ.**

4 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS
5 ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a
6 California public benefit corporation, and Against Defendant BAYPORT MARINA
7 PLAZA LLC, a limited liability company, inclusive)
8 (Health & Safety code §19955, *et seq.*)

9 1. For injunctive relief, compelling defendant BAYPORT MARINA PLAZA
10 LLC, inclusive, to make the BAYPORT MARINA PLAZA, located at 643 Bair Island Road,
11 Suite 400, Redwood City, California, readily accessible to and usable by individuals with
12 disabilities, per state law.

13 2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, Civil Code
14 §55, and/or, alternatively, Health & Safety Code §19953, if plaintiffs are deemed the prevailing
15 party;

16 3. For all costs of suit;
17 4. For prejudgment interest pursuant to Civil Code §3291;
18 5. Such other and further relief as the court may deem just and proper.

19 **V. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
20 FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
21 PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
22 CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

23 (On Behalf of Plaintiffs PATRICK CONNALLY and DISABILITY RIGHTS
24 ENFORCEMENT, EDUCATION, SERVICES:HELPING YOU HELP OTHERS, a
25 California public benefit corporation and Against Defendant BAYPORT MARINA
26 PLAZA LLC, a limited liability company, inclusive)
27 (California Civil Code §§51, 51.5, *et seq.*)

28 1. All statutory damages as afforded by Civil Code §52(a) for the date of incident
and for each occasion on which plaintiffs were deterred from returning to the subject public
accommodation;

1 2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiffs are deemed the
prevailing party;

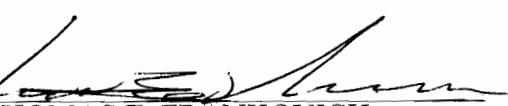
2 3. Treble damages pursuant to Civil Code §52(a);
3 4. For all costs of suit;
4 5. Prejudgment interest pursuant to Civil Code §3291; and

1 6. Such other and further relief as the court may deem just and proper.

2 **VI. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO**
3 **FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,**
4 **PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL**
5 **CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**
6 (On Behalf of Plaintiff PATRICK CONNALLY, and Against Defendant BAYPORT
7 MARINA PLAZA LLC, a limited liability company, inclusive)
8 (California Civil Code §§51, 51.5, et seq.)

9 1. General and compensatory damages to plaintiff PATRICK CONNALLY
10 according to proof.

11 Dated: 5/23/07, 2007 THOMAS E. FRANKOVICH
12 *A PROFESSIONAL LAW CORPORATION*

13 By: 
14 THOMAS E. FRANKOVICH
15 Attorneys for Plaintiffs PATRICK CONNALLY and
16 DISABILITY RIGHTS ENFORCEMENT, EDUCATION,
17 SERVICES:HELPING YOU HELP OTHERS, a California
18 public benefit corporation

19 **DEMAND FOR JURY TRIAL**

20 Plaintiffs hereby demand a jury for all claims for which a jury is permitted.

21 Dated: 5/23/07, 2007 THOMAS E. FRANKOVICH
22 *A PROFESSIONAL LAW CORPORATION*

23 By: 
24 THOMAS E. FRANKOVICH
25 Attorneys for Plaintiffs PATRICK CONNALLY and
26 DISABILITY RIGHTS, ENFORCEMENT, EDUCATION,
27 SERVICES:HELPING YOU HELP OTHERS, a California
28 public benefit corporation